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November Meeting of Denver Bar Association

Dicta Editorial Board

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November Meeting of Denver Bar Association

The November meeting of the Denver Bar Association was held on November 15th instead of the 4th, as scheduled, because, according to the secretary, "of the weather," said weather consisting of a 27 inch snow storm, largest in Denver since 1913. Royal C. Rubright, eminent Denver title attorney, spoke on the subject, "Are Lawyers Too Busy to Practice Law?", a slightly confusing title. A summary of his remarks follows:

Lawyers today are too busy practising law to see other things of major importance. Speaking as an attorney who seldom strays from the real estate field, I speak from my experience in this field.

What is the function of the attorney in a real estate transaction? Our ordinary concept is that he is to examine the title and render an opinion. There are really three phases of a real estate transaction, of which this is only one. The first phase is the receipt and option with which the buyer is confronted at the start. The buyer, our client, needs our services there. We aren't doing enough to make the buyer realize this. What can happen to the buyer who does not have this legal service? One example is that of a buyer in desperate need of a home into which he could immediately move. His contract provided that if title was not merchantable the seller had 120 days to make it so. Obviously this contract did not meet the needs of the client, and the client should have had this advice. In many other cases the purchaser needs the assistance of an attorney because the real estate agent has little, if any, knowledge of legal matters. The purchaser should know what he is entitled to in the way of adjustments and possession, and should have this in the contract.

The second phase is the examination of the title and the rendering of the opinion. In order to make it easier for another attorney to trace any objections made by the examining attorney, the examining attorney should refer, in his opinion, to the abstract entry number, the book, page and date of the recording, and the date of the instrument. All of these are important and assist greatly in running down the objection.

The third phase is the closing of the deal, and this phase is the function and duty of the attorney. Unless the attorney participates in the closing the purchaser may not get a proper deed, and may not see that objections or conditions raised by the attorney are properly met. For example, if a survey is requested, the survey made may not be sufficient.

It is the duty of the attorney to see that all these functions of the attorney in a real estate transaction are properly fulfilled, and if they are not, we are failing our clients.

Another matter is the preparation of contracts of sale and purchase of real estate. Printed forms of contracts do not meet all the needs of such transaction. The contract should contain a statement either that the purchaser

has examined the title and approves it, or that the purchaser accepts the title without examination. Usual contracts provide that the property should be conveyed by the seller free and clear of all liens and encumbrances. This should be limited to liens and encumbrances placed or permitted to be placed thereon by the seller, and should not include liens and encumbrances placed or permitted to be placed thereon by the purchaser, or by his failure to perform a duty of his. Such contracts should also specify what insurance should be carried, such as fire and liability. Incidentally, many attorneys prefer to use a note and deed of trust rather than a contract of sale and purchase, and there is much to commend the note and deed of trust over the contract.

With respect to joint tenancies, laymen are constantly advising laymen. Laymen fail to know and advise of certain legal difficulties which the lawyer knows or should know. For example, if all the funds for the purchase of a property taken in joint tenancy are provided by one of the joint tenants, a gift tax return should be filed with the state showing a gift to the other joint tenant of one-half the value of the property, if the entire property is worth more than \$5,000. There is a great penalty for failure to file gift tax returns. If the property is worth more than \$6,000, there should also be filed with the federal government a gift tax return, with a great penalty for failure to do so. The unfavorable income tax situation must be regarded, because of the tax on capital gains. The federal estate tax must also be considered. It is the policy of the federal government to assume that the jointly owned property should be entirely taxed in the decedent's estate, unless it can be shown that part or all the funds were supplied by the survivor. On some exchanges of property there is a taxable gain on the sale of one property, and the acquired property is acquired at the new base. Lawyers should know these things and keep their clients advised as to them.

What is the lawyer's responsibility to the public? The lawyer must be of better service to a larger segment of the population than he now is. There is no one now to tell the prospective purchaser that he needs a lawyer. I suggest that the bar associations prepare an illustrated pamphlet, showing the need for attorneys in real estate transactions, and how attorneys, in such situations, can be of benefit to purchasers. These pamphlets would be available at the desks of the clerks and recorders to all persons making inquiries about real estate transactions. The recorders would be glad to cooperate with the bar in the distribution of these pamphlets. This would be a simple and inexpensive way to get to prospective clients at the time they need the help of an attorney.

How are the lawyers constantly benefitting the public at the lawyers' own expense? One way is by adopting real estate standards which reduce the expense to clients in lawsuits, and real estate transactions. This is against the interests of the lawyers and save money for the public—our clients. We must let the public know that we are taking these positions in their interest and against ours.